

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING TEXT AMENDMENT REPORT (#FZTA-20-02)
(April 8, 2020)

A report to the Flathead County Planning Board and Board of Commissioners regarding an amendment to the text of the Canyon Area Land Use Regulatory System (CALURS). The proposed amendment would add a new area to Section 4.1(F)(2) called the Summit Mountain Area. The proposal also includes modifying the definition of “Bear Creek Area” and adding a definition of “Summit Mountain Area.”

The Flathead County Planning Board will conduct a public hearing on the proposed text amendment on April 8, 2020 in the 2nd Floor Conference Room of the South Campus Building located at 40 11th Street West, Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will also hold a public hearing on the proposed amendment(s) at a date and time yet to be determined. Documents pertaining to the text amendment(s) are available for public inspection in the Flathead County Planning and Zoning Office, South Campus Building, 40 11th Street West Suite, in Kalispell. Prior to the Commissioner’s public hearing, documents pertaining to the text amendment(s) will also be available for public inspection in the Flathead County Clerk and Records Office, 800 South Main Street, in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee

The property is not located within the jurisdiction of a Land Use Advisory Committee.

B. Planning Board

The Flathead County Planning Board will hold a public hearing on the proposed amendment on April 8, 2020. This space is reserved for a summary of the Planning Board’s discussion and recommendation.

C. Commission

The Flathead County Commissioners will hold a public hearing on the proposed amendment on a date to be determined. This space is reserved for a summary of the Commission’s discussion and decision.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant

Theodore J. Chase
P.O. Box 515
East Glacier, MT 59434

B. Proposed for Amendment

The proposed amendment to the text of CALURS is to add an additional area to Section 4.1(F)(2) called the Summit Mountain Area. Also a part of this request is to amend the definition of the existing Bear Creek Area and to add a definition of the Summit Mountain Area.

C. Criteria Used for Evaluation of Proposed Amendment:

Amendments to the text of the Canyon Area Land Use Regulatory System (CALURS) refers all CALURS text amendments to follow Section 2.08 Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

D. Compliance With Public Notice Requirements:

In conformance with Section 2.08 of the Flathead County Zoning Regulations regarding amendments to the text of that document, legal notice of the Planning Board public hearing on this application was published in the March 22, 2020 edition of *The Daily Interlake*. Public notice of the Board of County Commissioners' public hearing regarding the zoning text amendment will be published in the legal section of *The Daily Interlake* once a week for two weeks prior to the public hearing and be physically posted within the County according to statutory requirements found in Section 76-2-205 M.C.A. All methods of public notice will include information on the general character of the proposed amendment to the text of the Canyon Area Land Use Regulatory System, the time and place of the public hearing and that the text of the amendment is available for public inspection at the Flathead County Planning and Zoning Office and the Commissioners' Office.

E. Agency Referrals

Referrals for comment on the proposed amendment where not sent for this request.

III. COMMENTS RECEIVED

A. Public Comments

At the time of the writing of this staff report, the Planning and Zoning Department has not received any public comment regarding this request.

IV. EVALUATION OF PROPOSED AMENDMENT

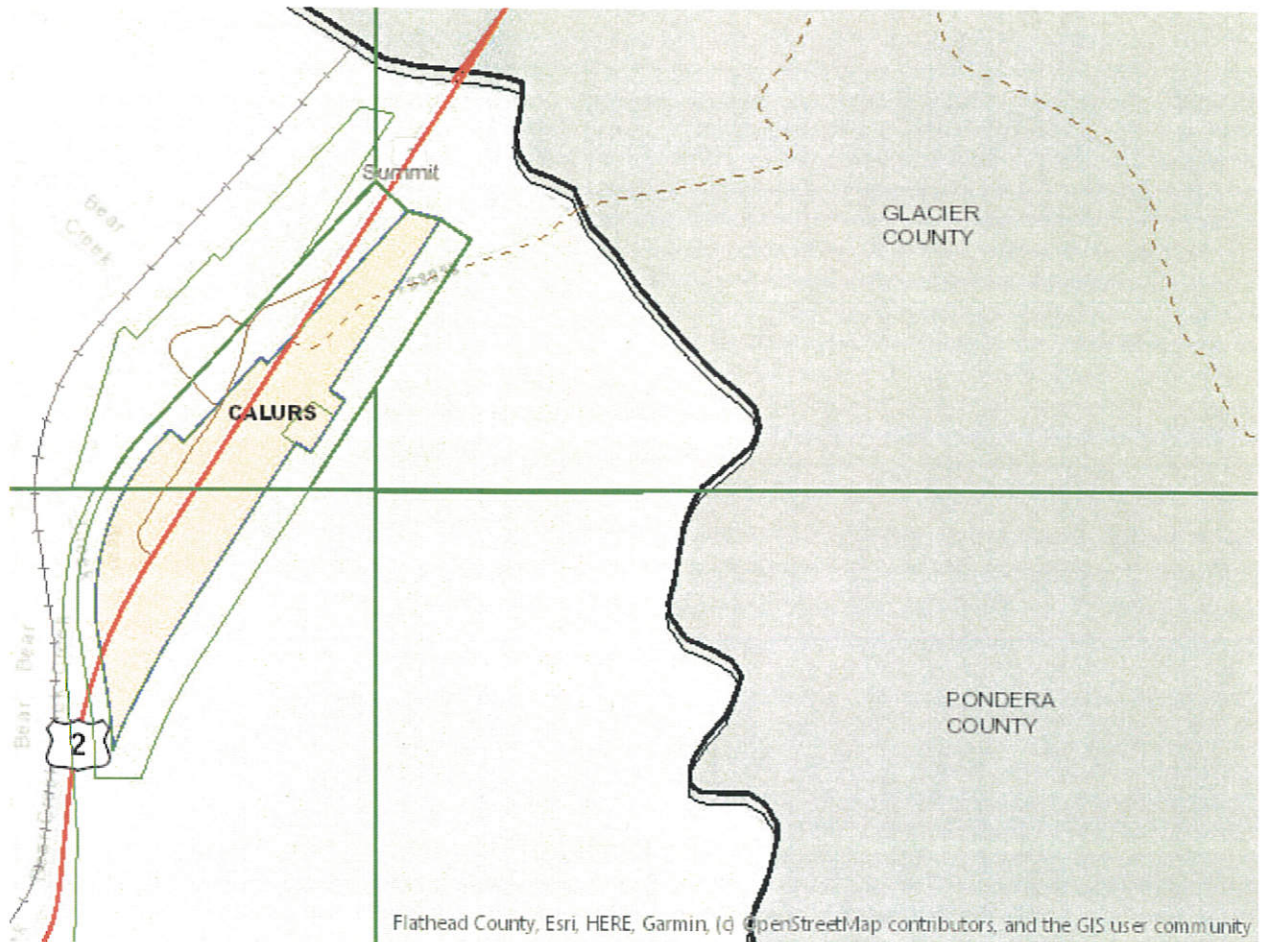
A. General character of and Reason for Amendment

The proposed amendment to CALURS is to add an additional area in Chapter 4 Performance Standards Applicable to Proposed Areas. Section 4.1(F)(2) outlines four regions in the Upper Canyon which require minimum lots sizes of 10 acres or more. The proposed Summit Mountain Area is currently included in the Bear Creek Area with a minimum lot size of 20 acres. The applicant is requesting to add the Summit Mountain Area in this section with no minimum lot size requirements in order to have the potential to create a very limit amount of new parcels. The area subject to this request is approximately 32 acres in size and is the location of the Summit Mountain Lodge. It is approximately 5 miles east of the next closest area zoned Upper Canyon and approximately ¼ mile west of the County border. The activities associated with the Summit Mountain Lodge, including weddings and other events predate the CALURS regulations. These uses are legal, nonconforming and may continue.

The Upper Canyon zoning consists of five different areas along the Highway 2 corridor east of West Glacier. These areas include Nyack, Essex, Pinnacle, Bear Creek, and Summit Mountain. While these areas are all zoned Upper Canyon, they are not contiguous. The applicant is in a unique situation where the property he owns that is zoned Upper Canyon and is included in the Bear Creek area according to CALURS is separated by approximately 5 miles of unzoned property. In addition, the applicant owns the entire 32 acres in the Summit Mountain area that is zoned Upper Canyon.

The applicant submitted a short narrative with the application, outlining what he hopes could be the future, limited development of the property if this text amendment is approved. He plans to expand the current sewage disposal system in order to construct five additional cabins. With the adoption of this request, the applicant could then create five, one acre lots for each cabin. The remainder of the property, approximately 25 acres, has essentially no further development potential because of environmental constraints.

Several possibilities were discussed with the applicant in trying to accomplish this goal. Because the applicant owns all of the property in this pocket of Upper Canyon zoning, one possibility is that he requests to remove the Upper Canyon zoning entirely. While valid arguments could have been made for removing the zoning, the applicant opted to request this text amendment to add an additional area to CALURS and also request no minimum lot size for this area. Because there is very limited development potential on the 32 acres and because the applicant has begun the process of determining the sewage capacity of the property, both the applicant as well as staff feels that this is a reasonable request.



B. Proposed Amendment

The proposed text amendment reads as follows:

CHAPTER 4

PERFORMANCE STANDARDS APPLICABLE TO PROPOSED USES

F. SITE DEVELOPMENT

1. Within designated community centers and service centers minimum lot sizes for new land divisions shall be 6,000 sq. ft.
2. Outside designated community centers and service centers minimum lot sizes shall be as follows:

<u>Region</u>	<u>Minimum Lot Size</u>
Middle Canyon Region	10 acres
Upper Canyon Region	10 acres
Nyack Area	10 acres
Pinnacle Area	10 acres
Essex Area	10 acres
Bear Creek Area	20 acres
<u>Summit Mountain Area</u>	<u>Not Applicable</u>

CHAPTER 7

DEFINITIONS

- 7.2 BEAR CREEK AREA: Those parcels of land outside of designated community centers in Sections 13, 24, & 26 of Township 29 N, Range 15 W, P.M.M., Flathead County, Montana and Sections 15, 16, 21, & 22 of Township 29 N, Range 14 W, P.M.M., Flathead County, Montana. ~~This area also includes tracts 1 and 37 of HES 1266, Exchange Survey as found in Section 1, Township 29 N, Range 14 W and in Section 36, Township 30 N, Range 14 W, P.M.M., Montana.~~

7.36 SUMMIT MOUNTAIN AREA: Tract 1 and 37 of HES 1266, Exchange Survey as found in Section 1, Township 29 N, Range 14 W and in Section 36, Township 30 N, Range 14 W, P.M.M., Flathead County, Montana.

C. Review of Proposed Amendment (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed text amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed text amendment will add an additional area to Section 4.1(F)(2) called Summit Mountain. The area of the proposed Summit Mountain is a disconnect, 32 acre property zoned Upper Canyon.

The Canyon Plan was adopted on May 17, 1994 and has been incorporated into the Flathead County Growth Policy. The Canyon Area Land Use Regulatory System (CALURS) is a

zoning district that was adopted on December 29, 1994 and is designed to meet the goals and policies of the Canyon Plan. And while The Canyon Plan is more specific to the Middle Canyon area, it still is required to be consistent with the overall Growth Policy.

The Flathead County Growth Policy outlines seven elements of the public's vision of the County and appears to be an acceptable starting point in evaluating proposed regulation changes. The seven elements are:

- **Protect the views**—The proposed text amendments should not interfere with the current scenic views in the Upper Canyon because the subject property of the proposed Summit Mountain area has limited development potential. In addition, CALURS currently restricts the height of new residential developments.
- **Promote a Diverse Economy**—The ability of the applicant to develop a limited number of new cabins to the existing Summit Mountain Lodge would provide summer visitors to the area a place to vacation.
- **Manage Transportation**—It is anticipated that there will be a negligible impact on transportation if this request is approved because the property has very limited development potential.
- **Maintain the Identify of Rural Communities**—The existing Summit Mountain Lodge has been in existence for some time. This is the only development within this section of the Upper Canyon zoning. The potential to develop a limited number of additional cabins should blend in with the existing development, resulting in little change to the area.
- **Protect Access to and Interaction with Parks and Recreation**—By approving this request, a handful of additional visitor will have access to the abundant recreational opportunities in the area.
- **Properly Manage and Protect the Natural and Human Environment**—It appears the environmental constraints on much of the proposed Summit Mountain area will ensure the natural environment will be sufficiently protected.
- **Preserve the Rights of Private Property Owners**—The applicant makes an argument that because the tourist season is greatly limited in this part of the County, additional, very limited development opportunities will preserve his property rights.

The following is an evaluation of the how the proposed text amendment is consistent with the specific goals and policies Growth Policy as well as The Canyon Plan:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
 - *The proposed amendment should preserve the property rights of the applicant by allowing the limited expansion of an existing tourist oriented lodge.*
- **P.2.1** – *Create land use regulations that are directly linked to the vision outlined in the Growth Policy.*
 - *As stated above, it appears the proposed text amendment is consistent with the seven elements of the public's vision of Flathead County.*
- **P.2.2** – *Regulatory and fiscal implementation of the Growth Policy should protect the public health, safety, morals, convenience, order, or general welfare in the process of community development.*

- *The application indicates that the future development plans for the property if this request is approved is limited by environmental constraints. Meeting all DEQ requirements for sewage disposal on any new development will protect public health, safety, and welfare.*
 - ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and general welfare of neighbors and efficiently provide local services.*
 - *The proposed text amendment could allow limited development in the proposed Summit Mountain Area that will blend in with the existing Summit Mountain Lodge. Because of the environmental constraints present in the area, the proposed limited new development will preserve the appearance of the existing development. Moreover, any new residential development will be required to obtain all necessary septic permits which will protect the health, safety and welfare while providing additional tourist accommodations.*
 - **P.8.1** – *Create reasonable, flexible and predictable development guidelines based on accurate, fair, and reasonable criteria.*
 - *The proposed addition of the Summit Mountain Area should create more flexible development guidelines that should enhance the existing uses of the property. All new development will require, at a minimum, septic permits, and, according to the applicant, the new development will be limited in size.*
 - ❖ **G.11** – *Protection of scenic resources available to both residents and visitors.*
 - *The applicant currently owns and operates the Summit Mountain Lodge which has been a mainstay in this area of the County for several decades. The aesthetics of the current development appears to value the scenic resources of that remote area of the County. According to the applicant, the amount of limited development available in the area should continue to reflect a rural, mountain atmosphere while protecting the existing scenic resources.*
 - ❖ **G.21** – *A healthy and vibrant Flathead County economy that provides diversity and living-wage job opportunities and is comprised of sustainable economic activities and private sector investment.*
 - *The proposed text amendment has the potential to enhance the economic viability of an existing tourist destination. While the tourist season in that area of the County is very limited, so too are tourist accommodations in short supply for the increasing number of visitors coming to Flathead County every summer. Approval of this request could offer an increase in those accommodations.*
- **The Canyon Plan**

- ❖ **Maintain the rural land use character of the Canyon**
 - *Because the existing Summit Mountain Lodge has been in existence for several decades, the proposed text amendment should have no effect on the rural character of this particular area of the Canyon. The proposed amendment, with the ability to add a limited number of additional cabins has the potential of enhance the character of the Summit Mountain area.*
- ❖ **Provide opportunities for quality residential and commercial development**
 - *The Summit Mountain Lodge is existing on the property. The lodge itself was constructed in Glacier National Park in the late 1920s and moved to*

this location in the 1980s. However, a train station was built on the property in 1906. The applicant has proposed this text amendment in hopes to enhance the existing commercial development and to develop a limited number of cabins. Due to much of the property hindered by environmental constraints, there does not appear to be a risk of over developing the property.

❖ **Provide opportunities for appropriate tourist-dependent businesses**

- *As mentioned, the site currently houses the Summit Mountain Lodge. This is an establishment that caters to the tourist visiting Glacier National Park and offers a multitude of park related activities. If approved, the text amendment would allow limited improvements to the property that would continue to host summer visitors to Flathead County.*

❖ **Recognize a grandfathered status for existing uses**

- *The Summit Mountain Lodge as well as the activities offered on site were lawfully created prior to CALURS being adopted in 1994. The text amendment, if approved would allow limited improvements to the property.*

❖ **Encourage the use of performance regulations to promote effective site planning for new uses**

- *The primary reason for the proposed amendment is that the existing performance standards will not allow for any additional improvements to the property. If approved, however, the addition of the proposed Summit Mountain Area would allow for the creation of a limited amount of smaller lots in order to develop addition cabins. The site characteristics and the environmental constraints associated with the property, according to the applicant, would result in the development of no more than five additional cabins. There are additional performance standards as well as other bulk and dimensional requirements that will not be altered by this request that would ensure any new development would not be out of place for the area.*

❖ **Regulate the location, type, and density of land uses**

- *As originally developed, CALURS strictly regulated the location, type and density of any new land uses proposed within the Upper Canyon area. It appears that Upper Canyon zoning was assigned to most of the privately owned property along the Highway 2 corridor east of West Glacier. In the other four dispersed areas of Upper Canyon zoning, there are multiple property owners within the zoned area. As mentioned previously, the applicant owns the entire property in the Summit Mountain area that is zoned Upper Canyon. Because of the current 20 acre minimum lot size required for this area, it is a challenge for the applicant to pursue any improvements. If approved, the text amendment would enable the applicant to pursue the limited improvements sought.*

❖ **Utilize a combination of traditional and innovative zoning techniques to provide flexibility in the application of land use regulations**

- *If approved, this request will continue to recognize many of the aspects of the CALURS regulations while offering the applicant the flexibility to pursue the limited development opportunities that are mentioned in the application.*

Finding #1: The proposed text amendment appears to be supported by the seven elements of the public's view of Flathead County as well as numerous goals and policies of the Flathead County Growth Policy because it preserves the rights of the property owner within

CALURS while at the same time protecting the health, safety and welfare of Upper Canyon residents; encourage continued positive investment in maintaining property within the Upper Canyon area; protect the residential and rural character of the area by requiring adherence to performance standards; and creates reasonable, flexible, and consistent development guidelines for the proposed limited development opportunities outlined in the application materials.

Finding #2: The proposed text amendment appears to be consistent with The Canyon Plan because it should provide opportunities to enhance an existing tourist dependent business. In addition, it should provide a more innovative approach to the regulations that will recognize the unique nature of the particular property subject to this request.

ii. Whether the proposed text amendment is designed to:

1. Secure safety from fire and other dangers;

The property is not located within any fire district area and, because of its location in a heavily forested area, is subject to wild land fire dangers. However, the proposed amendment should have no effect on fire safety. The current and future plans for the property appear to observe, to the extent possible, fire wise building practices.

There are no mapped flood hazards on the property; however, the head waters of Bear Creek are located in the western section of the property and seasonal high water can occur. The applicant has stated that there are no plans to develop remotely close to this area.

Finding #3: The proposed text amendment should have minimal effect of fire safety and other dangers because, even though the area is not within a fire district, current and future development will observe fire safety construction techniques and there are no mapped flood hazards on the property.

2. Promote public health, public safety, and general welfare;

According to the applicant, the reason for this request is to accomplish limited, additional development on the property. The plan is to develop up to five additional cabins on the portions of property not encumbered by the existing environmental constraints. The application states that he has been working with an environmental engineer to establish appropriate sanitation locations for this development. If approved, public health, safety and general welfare will be promoted because the future development of the property will be required to meet all requirements for new sanitation infrastructure.

Finding #4: The proposed text amendment appears to promote public health, safety and general welfare because the planned development of an additional five cabins will be required to meet the requirements for new septic and drainfield systems.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The property is located on Highway 2 just west of the County line. The existing Summit Mountain Lodge has appropriate approach permits from the Montana Department of Transportation, and any new development, albeit limited, may require that permit to be updated. As stated above, the planned limited development of up to five additional cabins will be required to meet all sanitation and water system

requirements as well. This request should have no impact on schools, parks, or other public requirements.

Finding #5: The proposed text amendment appears to facilitate the adequate provision of transportation, water, and sewerage because any future plans to develop the property will be required to obtain all appropriate permits as applicable, including approach permits and water and sanitation permits.

iii. In evaluating the proposed text amendment(s), consideration shall be given to:

1. The reasonable provision of adequate light and air;

The reasonable provision of adequate light and air typically is achieved through bulk and dimensional requirements included in the underlying zoning districts. Restrictions on setbacks, building and fence heights, minimum lot size, and lot coverage requirements serve to prevent structures from blocking light or preventing the circulation of air to adjoining property.

Finding #6: The proposed text amendment will reasonably provide for adequate light and air because all new development will be required to meet the bulk and dimensional requirements, including structure setbacks and maximum height requirements of CALURS.

2. The effect on motorized and non-motorized transportation systems;

It is anticipated that the proposed text amendment will have a minimal impact on both motorized and non-motorized traffic. The existing Summit Mountain Lodge appears to have the requirement approach permits and any new development may require the applicant to modify the existing approach permit. There does not appear to be any formal non-motorized vehicle infrastructure in the area. However, the property is surrounded by Forest Service property and property within Glacier National Park which provides opportunities for outdoor recreation.

Finding #7: The proposed text amendment will result in a minimal effect on motorized and non-motorized transportation systems because the existing Summit Mountain Lodge appears to have the necessary approach permits and any new development may require those permits to be modified, and there is no formal non-motorized transportation infrastructure in the area.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The request is not remotely in the vicinity of any cities or towns. Compatibility with urban growth in the vicinity of cities and towns is not applicable to this request.

Finding #8: The proposed text amendment appears to be compatible with urban growth in the vicinity of cities and towns because the area is more than 40 miles from any other city or town in the County.

4. The character of the district(s) and its peculiar suitability for particular uses;

This area of the Upper Canyon is particularly suited for this request as evidenced by the existing Summit Mountain Lodge. This establishment has been at this location since the 1980s and appears to be perfectly suited for the area. The potential to develop additional improvements also appears to be suitable for the area.

Finding #9: The proposed text amendment appears to be suitable for the uses proposed because the site is currently the location of the Summit Mountain Lodge and any potential improvements in the area will enhance the suitability of the existing use.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The purpose of the text amendment is to allow the potential for very limited development on the property. If approved, the applicant has stated that he would like the opportunity to develop up to five additional cabins that would be compatible with the existing use on the property. Considering the uniqueness of this request in that the Upper Canyon zoning consists of many disconnected areas that are zoned Upper Canyon and that the applicant owns all of the property within this area of Upper Canyon zoning, the requested text amendment appears to encourage the most appropriate use of this section of Upper Canyon zoning.

Finding #10: It is anticipated that the proposed text amendment will conserve, and perhaps even enhance, the value of buildings and encourage a most appropriate use of land because the property is the site of the Summit Mountain Lodge and the applicant proposes limited develop that will be compatible to the existing uses.

iv. Whether the proposed text amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

While the nearest municipality, Columbia Falls, is located approximately 50 miles to the west of the proposed Summit Mountain Area, this request will have no impact on the zoning regulations of the nearest municipality.

Finding #11: The proposed amendment will have no impact on the zoning regulations of the nearest municipality, Columbia Falls, because the proposed Summit Mountain Area is approximately 50 miles east of Columbia Falls.

V. SUMMARY OF FINDINGS

Finding #1: The proposed text amendment appears to be supported by the seven elements of the public's view of Flathead County as well as numerous goals and policies of the Flathead County Growth Policy because it preserves the rights of the property owner within CALURS while at the same time protecting the health, safety and welfare of Upper Canyon residents; encourage continued positive investment in maintaining property within the Upper Canyon area; protect the residential and rural character of the area by requiring adherence to performance standards; and creates reasonable, flexible, and consistent development guidelines for the proposed limited development opportunities outlined in the application materials.

Finding #2: The proposed text amendment appears to be consistent with The Canyon Plan because it should provide opportunities to enhance an existing tourist dependent business. In addition, it should provide a more innovative approach to the regulations that will recognize the unique nature of the particular property subject to this request.

Finding #3: The proposed text amendment should have minimal effect of fire safety and other dangers because, even though the area is not within a fire district, current and future

development will observe fire safety construction techniques and there are no mapped flood hazards on the property.

Finding #4: The proposed text amendment appears to promote public health, safety and general welfare because the planned development of an additional five cabins will be required to meet the requirements for new septic and drainfield systems.

Finding #5: The proposed text amendment appears to facilitate the adequate provision of transportation, water, and sewerage because any future plans to develop the property will be required to obtain all appropriate permits as applicable, including approach permits and water and sanitation permits.

Finding #6: The proposed text amendment will reasonably provide for adequate light and air because all new development will be required to meet the bulk and dimensional requirements, including structure setbacks and maximum height requirements of CALURS.

Finding #7: The proposed text amendment will result in a minimal effect on motorized and non-motorized transportation systems because the existing Summit Mountain Lodge appears to have the necessary approach permits and any new development may require those permits to be modified, and there is no formal non-motorized transportation infrastructure in the area.

Finding #8: The proposed text amendment appears to be compatible with urban growth in the vicinity of cities and towns because the area is more than 40 miles from any other city or town in the County.

Finding #9: The proposed text amendment appears to be suitable for the uses proposed because the site is currently the location of the Summit Mountain Lodge and any potential improvements in the area will enhance the suitability of the existing use.

Finding #10: It is anticipated that the proposed text amendment will conserve, and perhaps even enhance, the value of buildings and encourage a most appropriate use of land because the property is the site of the Summit Mountain Lodge and the applicant proposes limited develop that will be compatible to the existing uses.

Finding #11: The proposed amendment will have no impact on the zoning regulations of the nearest municipality, Columbia Falls, because the proposed Summit Mountain Area is approximately 50 miles east of Columbia Falls.

VI. RECOMMENDATION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations, a review and evaluation by the staff of the Planning Board, comparing the proposed zoning text amendment to the criteria for evaluation of amendment requests found in Section 2.08.040, has found the proposal to generally comply with the review criteria based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

MM